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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/523,034

02/02/2005

Hisakazu Hojo

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23850 7590 10/26/2009
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EXAMINER

COLE, ELIZABETH M

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

10/26/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/523,034	Applicant(s) HOJO ET AL.	
	Examiner Elizabeth M. Cole	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 September 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,6-9,11 and 13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,6-9,11 and 13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/4/09 has been entered.
2. Claims 4 and 13 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not provide support for interparticle or intraparticle pores.
3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
4. Claims 1-3, 6-9, 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iwasaki et al, U.S. Patent No. 4,844,734 in view of Chan et al, U.S. Patent No. 4,931,080. Iwasaki discloses a granular pesticide, (which corresponds to the claimed flower thinning agent) which comprises a mineral carrier which corresponds to the claimed inorganic compound. The mineral carrier can be silica, limestone or calcium carbonate amongst others, (see col. 4, lines 13-23). The mineral carrier can have a

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particle size which is smaller than 300 mesh, (note that 300 mesh would be about 40 microns, see attached conversion chart). The mineral carrier can further comprise an additive such as amino acids and phosphates, among others, (see col. 2, lines 25 - col. 4, line 2. The additive is present in 10-80 percent by weight. See col. 4, lines 3-8.

Iwasaki differs from the claimed invention because it does not disclose the BET specific surface area claimed and does not teach the particular particle size having 30 microns as the largest size, although Iwasaki does teach having particle sizes which are small than 300 mesh which is about 40 microns. However, Chan et al teaches that when forming phytoactive compositions comprising a mineral carrier and an additive that a smaller particle size improves the ease of dispersion of the particles. Chan teaches particles sizes for powder of from 3 to about 15 microns. See col. 10, lines 9-24.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed particles having the size disclosed in Chan in the invention of Iwasaki, with the expectation that this would form a product having improved dispersion. With regard to the BET specific surface area and the equations set forth in the claims, once a particle having the size range disclosed by Chan was provided in the invention of Iwasaki, the material of Iwasaki would satisfy the claimed equations because the same materials would be present in the same sizes.

5. Applicant's arguments filed 8/5/09 have been fully considered but they are not persuasive. With regard to claim 4, there does not appear to be support for the limitations of interparticle and intraparticle pores. There are not any drawings which show this feature and the specification does not define whether the pores are

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intraparticle or interparticle or both. Therefore, there is not sufficient support for this limitation in the specification as originally filed.

6. With regard to the art rejection, Applicant's arguments are persuasive and those rejections are withdrawn as noted in the advisory action and the interview summary. A new rejection is set forth above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (571) 272-1475. The examiner may be reached between 6:30 AM and 6:00 PM Monday through Wednesday, and 6:30 AM and 2 PM on Thursday.

The examiner's supervisor Rena Dye may be reached at (571) 272-3186.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

The fax number for all official faxes is (571) 273-8300.

/Elizabeth M. Cole/
Primary Examiner, Art Unit 1794

e.m.c